313 US 595

(19)

TRANSCRIPT OF RECORD

Office - Supreme Court
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CHARLES ELMORE CR
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Supreme Court of the United States

October Term, 1940

No. 924

TOM WING ART, alias WING FOOK TOM, alias SHORTY YUEN,

Petitioner,

vs.

WILLIAM A. CARMICHAEL, District Director of United States Immigration and Naturalization Service, District No. 20,

Respondent.

UPON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

PARKER PRINTING COMPANY, 545 SANSOME STREET, SAN FRANCISCO

No. 9564

United States

Circuit Court of Appeals

For the Ninth Circuit.

TOM WING ART, alias WING FOOK TOM, alias SHORTY YUEN,

Appellant,

vs.

WILLIAM A. CARMICHAEL, District Director of U. S. Immigration and Naturalization Service, District No. 20,

Appellee.

Transcript of Record

Upon Appeal from the District Court of the United States for the Southern District of California, Central Division

PARKER PRINTING COMPANY, 545 SANSOME STREET, SAN FRANCISCO

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

For Appellant:

WILLIAM H. WYLIE, Esq.,
H. P. LARSON BECK, Esq.,
HUGH A. SANDERS, Esq.,
920 Bank of America Bldg.,
San Diego, California.

For Appellee:

BEN HARRISON, Esq.,
United States Attorney,
Federal Building,
Los Angeles, California. [1*]

In the United States District Court for the Southern District of California, Central Division.

No. 14090-C

In the matter of TOM WING ART, alias WING FOOK TOM, alias SHORTY YUEN,

A resident Chinese Alien,

ON HABEAS CORPUS.

PETITION FOR WRIT OF HABEAS CORPUS

To the Honorable United States District Judge now presiding in the United States District Court, in and for the Southern District of California, Southern Division:

Your Petitioner respectfully represents that he is an alien of the Chinese race, a native and citizen

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*Page numbering appearing at foot of page of original certified Transcript of Record.

of China, and that he last entered the United States on June 12, 1921 at the port of San Francisco, California; and that he has at all times since said entry been and now is a resident of the State of California.

That your Petitioner is unlawfully imprisoned, detained, confined and restrained of his liberty by Walter E. Carr, District Director of Immigration and Naturalization for the port of Los Angeles, at the Immigration Station at Terminal Island, County of Los Angeles, State and Southern District of California, Southern Division thereof; that said imprisonment, detention, confinement [2] and restraint are illegal, and that the illegality thereof consists in this, to-wit:

That it is claimed by the said District Director that your Petitioner is subject to *deporation* from and out of the United States upon the ground that: he has been found receiving, sharing in, or deriving benefit from the earnings of a prostitute; that he has been found connected with the management of a house of prostitution; that he has been found managing a house of prostitution, or music or dance hall, or other place of amusement, or resort habitually frequented by prostitutes; or where prostitutes gather; and that the said District Director intends to deport your Petitioner away from and out of the United States to China.

That a hearing was had by your Petitioner on said charges and the testimony and records sub-

mitted to the Honorable Secretary of Labor, who issued a warrant for deportation of your Petitioner, under which warrant the said District Director of immigation is now imprisoning, detaining, confining and restraining your Petitioner, and unless this Honorable Court intervenes, intends and will deport your Petitioner from and out of the United States to China;

That it is claimed by the said District Director of immigration and the said Secretary of Labor that in all the proceedings had herein, your Petitioner was accorded a full and fair hearing; that the action of the said District Director of immigration and the said Secretary of Labor was within the powers and authorities conferred upon them by the various Acts of Congress regulating immigration and was taken and made by them in the proper exercise of the powers and discretions committed to them by statutes in such cases made and provided and in accordance with the regulations promulgated under the authorities contained in said Statutes;

[3]

But on the contrary, your petitioner, on his information and belief, alleges that the hearing and proceedings had herein and the action of said District Director of immigration and of the said Secretary of Labor was and is in excess of the powers and authorities conferred upon said District Director of immigration and said Secretary of Labor by the Act of Congress in such cases made and pro-

vided and is in excess of the authorities committed to them by the rules and regulations promulgated under said statutes and that the deportation of your petitioner, a person lawfully residing within the United States, from the United States to China on the ground that he was receiving, sharing in, or deriving benefit from the earnings of a prostitute; or he was connected with the management of a house of prostitution, or that he managed a house of prostitution, or music or dance hall, or other place of amusement, or resort, habitually frequented by prostitutes, or where prostitutes gather, was and is an abuse of the authority committed to them by said Statutes, and in excess of powers conferred upon them, the said District Director of immigration and the said Secretary of Labor, in each of the following particulars:

Your Petitioner alleges that the evidence presented before the immigration inspector and submitted to the Secretary of Labor, and upon which evidence said Secretary of Labor has issued a warrant of deportation, which evidence is now hereby referred to with same force and effect as if set forth in full herein, contains absolutely no evidence that your Petitioner at the time of the issuance of the warrant of deportation in the above-entitled matter, to-wit, August 10, 1938, or at the time of his arrest, was receiving, sharing in, or deriving benefit from the earnings of a prostitute, or that he was connected with the management of any house of prostitution, or that he was managing a house of prosti-

tution, or music or dance hall, or other place of amusement, or resort, habitually frequented by prostitutes, or where prostitutes gather; [4] or that he has ever received, shared in, or derived benefits from the earnings of a prostitute, or been connected with the management of a house of prostitution, or managed a house of prostitution, or music or dance hall, or other place of amusement, or resort, habitually frequented by prostitutes, or where prostitutes gather; that petitioner during the course of the hearing had in the above-entitled matter before the Immigration Inspector was denied and refused the right to cross-examine adverse witnesses called by the immigration service in said procedure to the extent necessary in order to protect the interests of your petitioner;

That said action of the Director of Immigration and said Secretary of Labor in concluding that your petitioner was unlawfully within the United States and in ordering your petitioner's deportation by reason of said unlawful presence in the United States, as well as the refusal of said Director of Immigration and said Secretary of Labor to be guided by the evidence and the provisions of the Immigration Laws, providing for the offenses for which deportation may be ordered, and the said adverse action of said District Director and said Secretary of Labor in finding that your petitioner is unlawfully in the United States, was, your petitioner alleges, upon his information and belief, ar-

rived at and done in denying your petitioner a fair hearing and a consideration of his case to which he was entitled;

Your Petitioner further alleges that the evidence produced before the Immigration Inspector and submitted to the Secretary of Labor, and upon which evidence the said Secretary of Labor issued said warrant of deportation, which evidence is hereby referred to with same force and effect as if set forth in full herein, was of such a conclusive kind and character establishing that your petitioner on the date when the warrant of arrest was issued and at the time of his arrest was not "found receiving, sharing in, or deriving benefit from the earnings of a prostitute, or found connected with the management of a house of prostitution, or managing a house of [5] prostitution, or music or dance hall, or other place of amusement, or resort, habitually frequented by prostitutes, or where prostitutes gather"; that the refusal of said District Director of Immigration and said Secretary of Labor to be guided by said evidence and the adverse action of said District Director of immigration and said Secretary of Labor was your petitioner alleges, upon his information and belief, arrived at and done in denying your petitioner a fair hearing and fair consideration of his case to which he was entitled; and that said action of said District Director of Immigration and said Secretary of Labor was in excess of the power and authority vested in them,

or either one of them, under the Immigration laws.

That your petitioner has not in his possession any of the immigration records, and he has been unable to secure copies thereof from the immigration authorities and your petitioner herewith alleges his willingness to incorporate and have considered as part and parcel of this petition the entire immigration records, and requests that the same may be attached hereto and made a part hereof and marked "Exhibit A", and presented to the Court at a hearing to be had on said petition.

That it is the intention of said District Director of immigration and of said Secretary of Labor to deport your petitioner away from and out of the United States to China in the very near future and unless this Court intervenes to prevent said deportation, your petitioner will be deprived of his right to reside and remain in the United States, to which right he claims he is legally entitled.

Wherefore, your petitioner prays that a Writ of Habeas Corpus issue herein as prayed for, directed to the said Walter E. Carr, District Director of immigration, commanding and directing him to hold the body of your petitioner within the jurisdiction of this Court and to present the body of your petitioner before this Court at a time and place to be specified in said order, together with the time and cause of his detention, so that the same may be inquired into to the end that your petitioner may be restored to his liberty and [6] go hence without day.

Dated: San Diego, California, October 2, 1939.

TOM WING ART,
WONG FOOK TOM,
Petitioner.

WILLIAM H. WYLIE,
H. P. LARSON BECK,
HUGH A. SANDERS,
By WILLIAM H. WYLIE,
Attorneys for Petitioner.

United States of America,
State and Southern District of California,
County of San Diego—ss.

The undersigned, being first duly sworn, deposes and says That he is the petitioner named in the foregoing petition; that the same has been read and explained to him and he knows the contents thereof; that the same is true of his own knowledge except as to those matters which are herein stated on his information and belief, and as to those matters he believes it to be true.

TOM WING ART,
WING FOOK TOM.

Subscribed and sworn to before me this 30th day of September, 1939.

[Seal] HUGH A. SANDERS,
Notary Public in and for said County and State.

Received copy of the within this ..... day of ..... 19.....

WALTER E. CARR,
Attorney for

[Endorsed]: Filed Oct. 2, 1939. [7]

[Title of District Court and Cause.]

ORDER TO SHOW CAUSE

Good cause appearing therefor, and upon reading the verified petition on file herein;

It Is Hereby Ordered that Walter E. Carr, District Director of Immigration and Naturalization for the port of Los Angeles, appear before Honorable Geo. Cosgrave, Judge of the above-entitled Court on Monday, the 13th day of November, 1939, at the hour of 10 o'clock of said day, to show cause, if any he may have, why a writ of habeas corpus should not be issued herein as prayed for, and that a copy of this order be served upon said District Director, and a copy of the petition and said order be served upon the United States Attorney for this District, his representative herein; and

It Is Further Ordered that said Walter E. Carr, District Director of Immigration and Naturalization, as aforesaid, or whoever, acting under the orders of said District Director, or the [8] Secretary of Labor, shall have the custody of said Tom Wing Art, alias Wing Fook Tom, alias Shorty Yuen, or the master of any steamer upon which he may have been placed for deportation by said District Director, are hereby ordered and directed to retain said Tom Wing Art, alias Wing Fook Tom, alias Shorty Yuen, within the custody of said District Director and within jurisdiction of this Court, until its further order herein.

It Is Further Ordered that the said Tom Wing Art, alias Wing Fook Tom, alias Shorty Yuen, be

released upon bail pending a hearing of this order and the determination of the petition hereon filed, upon giving bond in the sum of three thousand Dollars, conditioned that the said Tom Wing Art, alias Wing Fook Tom, alias Shorty Yuen, shall comply with all orders made by the above-entitled Court, and shall surrender himself to the proper immigration official should his petition herein be dismissed, or the prayer thereof be denied.

Dated: Los Angeles, California, October 2nd, 1939.

GEO. COSGRAVE,
United States District Judge.

Received copy of the within this ..... day of .....19.....

WALTER E. CARR,
Attorney for

[Endorsed]: Filed Oct. 2, 1939. [9]

[Title of District Court and Cause.]

HABEAS CORPUS

The President of the United States of America

To Walter E. Carr, District Director of Immigration and Naturalization—Greeting:

You Are Hereby Commanded, that the body of Tom Wing Art, alias Wing Fook Tom, alias Shorty Yuen, by you restrained of his liberty, as it is said detained by whatsoever names the said Tom Wing

Art, alias Wing Fook Tom, alias Shorty Yuen, may be detained, together with the day and cause of being taken and detained, you have before the Honorable George Cosgrave, Judge of the United States District Court in and for the Southern District of California, at the court room of said Court, in the City of Los Angeles at 10:00 o'clock a. m., on the 13th day of November, 1939, then and there to do, submit to and receive whatsoever the said Judge shall then and there consider in that behalf; and have you then and there this writ.

Witness the Honorable Geo. Cosgrave, United States District Judge at Los Angeles, California, this 2nd day of October, A. D. 1939,

R. S. ZIMMERMAN,

Clerk.

By J. M. HORN,

Deputy Clerk.

UNITED STATES MARSHAL'S RETURN

..... District of....., ss:

Received the within writ the 2nd day of October, 1939, and executed same.

WALTER E. CARR,

By A. DEL GUERCIO.

Deputy Marshal.

[Endorsed]: Filed Nov. 13, 1939. [10]

[Title of District Court and Cause.]

RETURN TO WRIT OF HABEAS CORPUS

I, Walter E. Carr, District Director of U. S. Immigration and Naturalization Service, Los Angeles, California District No. 20, Respondent herein, for my return to writ of habeas corpus herein, do hereby certify that I am unable to produce the body of Tom Wing Art, alias Wing Fook Tom, alias Shorty Yuen before this Honorable Court for the reason that the said Tom Wing Art, alias Wing Fook Tom, alias Shorty Yuen was released on bond in the sum of Three Thousand Dollars ($3,000.00) by order of this Honorable Court made and entered on October 2, 1939.

For further return to said writ I hereby certify that the true cause of the detention of the aforesaid Tom Wing Art, alias Wing Fook Tom, alias Shorty Yuen is the authority contained in a certain warrant of deportation duly and regularly issued on the 14th day of August, 1939 by Turner W. Battle, Assistant to the Secretary of Labor, after a hearing duly and regularly held before an Immigrant Inspector of the United States.

A copy of said warrant of deportation is attached hereto marked Exhibit "A".

Respectfully submitted,

WALTER E. CARR,

District Director of U. S. Immigration and Naturalization Service, Los Angeles, California, District No. 20, Respondent. [11]

EXHIBIT "A"

WARRANT — DEPORTATION OF ALIEN

United States of America
Department of Labor
Washington

No. 16539/208
55983/430

To: District Director of Immigration and Naturalization, Los Angeles, Calif.

Or to any Officer or Employee of the United States Immigration and Naturalization Service.

Whereas, from proofs submitted to me, Assistant to the Secretary, after due hearing before an authorized immigrant inspector, I have become satisfied that the alien Tom Wing Art or Tam Wing Fook or Tom Wing Fook or Wing Fook Tom alias Tommy Yen or Yuen alias Shorty Yen or Yuen. who entered the United States at San Francisco, California on the 12th day of June, 1921 is subject to deportation under section 19 of the Immigration Act of February 5, 1917, being subject thereto under the following provisions of the laws of the United States, to-wit: The Act of 1917, in that he has been found connected with the management of a house of prostitution; that he has been found receiving, sharing in, or deriving benefit from the earnings of a prostitute; and that he has been found managing a house of prostitution, or music or dance hall or other place of amusement, or resort, habitually frequented by prostitutes, or where prostitutes gather.

I, the undersigned officer of the United States, by virtue of the power and authority vested in me by and under the laws of the United States, do hereby command you to deport the said alien to China, at the expense of the appropriation, "General Expenses, Immigration and Naturalization Service, 1940", including the expenses of an attendant, if necessary. The alien may be permitted to depart, or ship foreign one way, without expense to the United States, to any country of his choice, except contiguous territory or adjacent islands, on consent of surety, such departure to be verified and considered a satisfactory compliance with the terms of the warrant, but alien should be advised that he will not, under existing law, be eligible to apply for entry to the United States until after one year following date of deportation, and then only if the Secretary of Labor has authorized him to apply for admission. Delivery of the alien and acceptance for deportation or departure in accordance with the foregoing will be deemed sufficient to cancel the outstanding delivery bond.

For so doing this shall be your sufficient warrant.

Witness my hand and seal this 14th day of August, 1939.

(s) TURNER W. BATTLE,
Assistant to the Secretary of Labor.

Received copy of the within Return to Writ of Habeas Corpus this 13th day of November, 1939.

HUGH A. SANDERS,
Attorney for Petitioner.

[Endorsed]: Filed Nov. 13, 1939. [12]

[Title of District Court and Cause.]

SUBSTITUTION OF PARTY

Whereas, Walter E. Carr, as District Director of United States Immigration and Naturalization Service at Los Angeles, California, District No. 20. has been named as Respondent in the above entitled proceeding, and

Whereas, the said Walter E. Carr is now deceased, having died on the 2nd day of January, 1940, and

Whereas, William A. Carmichael has been duly and regularly appointed as District Director of the United States Immigration and Naturalization Service at Los Angeles, California, District No. 20,

It Is Respectfully Moved that this Court order the substitution of said William A. Carmichael as Respondent in this proceeding in place of said Walter E. Carr, deceased.

Respectfully submitted,

WILLIAM A. CARMICHAEL,

District Director of U. S. Immigration and Naturalization Service, Los Angeles, California District No. 20, Respondent

It Is So Ordered this 12th day of February, 1940.

GEO. COSGRAVE,

Judge, United States District Court.

[Endorsed]: Filed Feb. 12, 1940. [14]

At a stated term, to-wit: The February Term, A. D. 1940, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Tuesday the 14th day of May in the year of our Lord one thousand nine hundred and forty.

Present:

The Honorable: Geo. Cosgrave, District Judge.

No. 14,090-C Crim.

In the Matter of Petition of

TOM WING ART,
alias Wing Fook Tom
alias Shorty Yuen

For a Writ of Habeas Corpus

This matter having come before the Court on November 13, 1939, for hearing on return to Writ of Habeas Corpus; and having been submitted on briefs to be filed 30 x 30 x 10, and the said briefs having been filed and duly considered by the Court, the Court orders as follows:

Petition for Writ of Habeas Corpus is denied, and petitioner is remanded to the custody of the immigration authorities. [15]

[Title of District Court and Cause.]

ORDER FIXING CUSTODY OF PETITIONER PENDING APPEAL.

That Petitioner, Tom Wing Art, alias Wing Fook Tom, alias Shorty Yuen, having filed his notice of appeal to the United States Circuit Court of Appeals for the Ninth Circuit, from the judgment or order of the above entitled court, made on the 14th day of May, 1940, denying Petitioner's application for discharge under a Writ of Habeas Corpus and remanding him to the custody of the Immigration Service of the United States, it is hereby ordered that all proceedings for the enforcement of said order against Petitioner be stayed, and that the custody of Petitioner be and remain in the above-entitled United States District Court pending the hearing and determination of said appeal; and

It Is Further Ordered, that said petitioner Tom Wing Art, may be released pending appeal upon giving bond in the sum of Three Thousand Dollars ($3,000.00) to be approved by this Court, and that he remain within the United States, and render himself in execution of whatever judgment is finally entered herein at the termination of said Appeal.

Dated at Los Angeles, California, May 31st, A. D. 1940.

GEO. COSGRAVE,
United States District Judge.

[Endorsed]: Filed May 31, 1940. [16]

[Title of District Court and Cause.]

NOTICE OF APPEAL.

To William A. Carmichael, District Director of U. S. Immigration and Naturalization Service, Los Angeles, California, District No. 20, Respondent and Appellee, herein, and to Ben Harrison, Esq., United States Attorney in and for the Southern District of California, appearing for said District Director:

The Petitioner, Tom Wing Art, alias Wing Fook Tom, alias Shorty Yuen, whose Petition for a Writ of Habeas Corpus was denied on the 14th day of May 1940 by the above entitled Court by order made in said cause, hereby gives notice thereof, and does hereby appeal to the United States Circuit Court of Appeals for the Ninth Circuit, from the said judgment or order, so made and entered herein, and from the whole thereof.

That the names and address of the office of Petitioner and appellant's Attorneys are, William H. Wylie, H. P. Larson Beck, and Hugh A. Sanders, 920 Bank of America Building, San Diego, California.

That the name and address of the office of Respondent's Attorney is: Ben Harrison, Esq., Federal Building, Los Angeles, California. [17]

Dated at San Diego, California, this 29th day of May, 1940.

WILLIAM H. WYLIE,
H. P. LARSON BECK,
HUGH A. SANDERS,
By WILLIAM H. WYLIE,
Attorneys for Petitioner and Appellant.

Copy mailed May 31, 1940 to William A. Carmichael, District Director of U. S. Immigration and Naturalization Service, Federal Building, Los Angeles, Calif.

R. S. ZIMMERMAN,

Clerk.

By E. L. S.,

Deputy Clerk.

[Endorsed]: Filed May 29, 1940 [18]

[Title of District Court and Cause.]

COST BOND ON APPEAL.

Know All Men By These Presents, That we, Tom Wing Art, as principal, and Henry Quin, Margaret Quin Kuey, Yee Sen On and Din Bo Yee, as sureties, are held and firmly bound unto the United States of America in the sum of Two Hundred and Fifty Dollars for the payment of which sum we hereby bind ourselves, heirs, successors, administrators and assigns.

Sealed with our seals and dated this 29th day of May, 1940.

Whereas, the Petitioner, Tom Wing Art, has prosecuted and appealed to the United States Circuit Court of Appeals for the Ninth Circuit, to reverse the judgment, order or decree entered in said cause by the United States District Court for

the Southern District of California, Central Division, on the 14th day of May, 1940, against Petitioner, denying to him a Writ of Habeas Corpus and remanding him to the custody of the United States Immigration authorities;

Now, Therefore, the condition of this obligation is such [19] that if the above-named petitioner shall prosecute this appeal to effect and answer all costs if *they* fail to make good his plea, then this obligation to be void; otherwise, in full force and virtue.

Dated, May 29th, 1940.

TOM WING ART,

Principal.

HENRY QUIN,
MARGARET QUIN KUEY,
YEE SEN ON,
DIN BO YEE,

Sureties.

Address of all Sureties 920 Bank of America Bldg., San Diego, Calif.

State of California,
County of San Diego—ss.

Henry Quin, Margaret Quin Kuey, Yee Sen On and Din Bo Yee, the sureties whose names are subscribed to the within undertaking, each being sworn for himself, and herself says: I am a resident and freeholder in the County of San Diego, State of California, and am worth the sum in the undertaking specified, as the penalty thereof, over and

above all my just debts and liabilities, exclusive of property exempt from execution.

YEE SEN ON
DIN BO YEE
HENRY QUIN
MARGARET QUIN KUEY

Subscribed and sworn to before me this 29th day of May, 1940.

[Seal] HUGH A. SANDERS,
Notary Public in and for the County of San Diego, State of California.

[Endorsed]: Filed May 29, 1940. [20]

STIPULATION OF SURETIES IN COMPLIANCE WITH COURT RULES.

Henry Quin, Margaret Quin Kuey, Yee Sen On and Din Bo Yee, the sureties whose names are subscribed to the within and foregoing Bond and Undertaking, herewith submit themselves to the Jurisdiction of the above-entitled Court, and irrevocably appoint the Clerk of said Court as their Agent, upon whom any papers respecting their liability on the above, and foregoing bond or obligation, may be served and given, and their liability on said bond or obligation may be enforced on motion without the necessity of an independent action, all as provided by Rule 73, Subdivision C,

D and F thereof, of the Rules of the above-entitled Court.

HENRY QUIN,
MARGARET QUIN KUEY,
YEE SEN ON,
DIN BO YEE,
Sureties.

United States of America,
State of California,
County of San Diego.—ss.

On this 29th day of May, A. D. 1940, before me, Hugh A. Sanders, a Notary Public, in and for said County and State, residing therein, duly commissioned and sworn, personally appeared Tom Wing Art, Henry Quin, Margaret Quin Kuey, Yee Sen On and Din Bo Yee, each and all, personally known to me to be the persons whose names are subscribed to the within and foregoing Bond, and the above Stipulation, and each and every one of said persons acknowledged to me that he had or she had subscribed their name thereto. [21]

In Witness Whereof, I have hereunto set my hand and affixed my official seal, the day and year in this Certificate first above written.

[Seal] HUGH A. SANDERS,
Notary Public, in and for the County of San Diego, State of California.

[Endorsed]: Filed May 29, 1940. [22]

[Title of District Court and Cause.]

STIPULATION AND ORDER RESPECTING WITHDRAWAL OF IMMIGRATION RECORD.

It Is Hereby Stipulated and agreed between the attorneys for Petitioner and Appellant herein, and the attorney for the Respondent and Appellee herein, that the original Immigration Record in evidence, together with the Warrant of Deportation, in evidence and considered as part and parcel of the Petition for the Writ of Habeas Corpus upon the hearing thereof in the above entitled matter, may be withdrawn from the files of the Clerk of the above entitled Court and filed with the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, there to be considered as a part of the record on appeal in the above entitled case with the same force and effect as if embodied in the Transcript of the record and so certified by the Clerk of the above-entitled Court.

Dated at Los Angeles, California, this 31 day of May, 1940.

BEN HARRISON,
United States Attorney,
By RUSSELL K. LAMBEAU
Assistant United States
Attorney
WILLIAM H. WYLIE
Attorney for Petitioner herein.

[23]

ORDER.

Upon reading and filing of the foregoing stipulation, it is hereby ordered that said Immigration Record and the Warrant of Deportation therein referred to may be withdrawn from the office of the Clerk of this Court and filed in the office of the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, said withdrawal to be made at the time the record on appeal herein is certified by this Court.

Dated at Los Angeles, California, this 31st day of May, A. D. 1940.

GEO. COSGRAVE
United States District Judge.

[Endorsed]: Filed May 31, 1940. [24]

[Title of District Court and Cause.]

STATEMENT OF POINTS ON WHICH APPELLANT INTENDS TO RELY

Comes now the above named appellant, Tom Wing Art, by his attorneys, Hugh Sanders, H. P. L. Beck and William H. Wylie, and states that the points upon which he, the appellant, intends to rely in this appeal are, as follows:

1. That the District Court erred in dismissing the Writ of Habeas Corpus and remanding appellant to the Immigration authorities;

2. That the District Court erred in sustaining

the Secretary of Labor in directing the deportation of appellant from the United States;

3. That the record contains no evidence tending to establish that appellant "received, shared in or derived benefit from the earnings of a prostitute";

4. That the record contains no evidence tending to establish that appellant was "found connected with the management of a house of prostitution";

5. That the record contains no evidence tending to establish that applicant was "found managing a house of prostitution, or music or dance hall or other place of amusement, or resort, habitually frequented by prostitutes, or where prostitutes gather"; [25]

6. That the record contains no evidence tending to establish that appellant has committed any deportable offense;

7. That the record contains no evidence that appellant was "found connected with the management of a house of prostitution" or "found managing a house of prostitution, etc." at time the warrant of arrest was issued by Secretary of Labor or at time of his arrest;

8. That the record contains no evidence tending to establish that appellant has committed any of the deportable offenses set forth in the Warrant of arrest or contained in the Warrant of Deportation issued by Secretary of Labor under which the said Secretary of Labor seeks to deport appellant from the United States.

9. That the order of the United States District Court sustaining the warrant of deportation issued

by Secretary of Labor directing the deportation of appellant is against the law.

Respectfully submitted,

WILLIAM H. WYLIE
H. P. LARSON BECK
HUGH A. SANDERS
By WILLIAM H. WYLIE
Attorneys for Appellant,
Tom Wing Art.

Received copy of the above and within statement of Points this 31st day of May 1940.

BEN HARRISON,
U. S. Atty.
By RUSSELL K. LAMBEAU,
Asst. U. S. Atty.

[Endorsed]: Filed May 31, 1940. [26]

[Title of District Court and Cause.]

DESIGNATION OF THE PORTIONS OF THE RECORD, PROCEEDINGS AND EVIDENCE TO BE CONTAINED IN THE RECORD ON APPEAL.

To the Clerk of the above-entitled Court:

Please make copies of the following papers in the above entitled cause to be used in preparing Transcript or Record on Appeal:

1. Petition for Writ of Habeas Corpus,
2. Order to Show Cause, and Writ of Habeas Corpus.

3. Respondent's Return to Writ of Habeas Corpus.

4. Court's Memorandum and Order of May 14th, 1940, dismissing the Writ and remanding Petitioner.

5. Order fixing custody of Appellant pending Appeal.

6. Notice of Appeal.

7. Stipulation and order regarding Immigration Record.

8. Cost Bond on Appeal.

9. Citation on Appeal.

10. Designation of the portions of the Record, Proceedings and Evidence to be contained in the record on appeal.

11. Clerk's Certificate.

Dated at Los Angeles, California, May 31st, 1940.

WILLIAM H. WYLIE,
H. P. LARSON BECK and
HUGH A. SANDERS
By WILLIAM H. WYLIE
Attorneys for Petitioner and Appellant.

Received copy of the above and within this 31st day of May 1940.

BEN HARRISON,
United States Attorney
By RUSSELL K. LAMBEAU,
Asst. U. S. Atty.

[Endorsed]: Filed May 31, 1940. [27]

[Title of District Court and Cause.]

CLERK'S CERTIFICATE

I, R. S. Zimmerman, Clerk of the District Court of the United States for the Southern District of California, do hereby certify the foregoing pages, numbered from 1 to 27, inclusive, contain full, true and correct copies of Petition for Writ of Habeas Corpus; Order to Show Cause; Writ of Habeas Corpus; Return to Writ of Habeas Corpus; Substitution of Party Respondent; Order Denying Writ and Remanding; Order Fixing Custody of Petitioner Pending Appeal; Notice of Appeal; Cost Bond on Appeal; Stipulation and Order Respecting Withdrawal of Immigration Record; Statement of Points on Which Appellant Intends to Rely, and Designation of Contents of Record on Appeal, which together with the Original Immigration Record transmitted herewith, constitute the record on appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

I Do Further Certify that the fees of the Clerk for comparing, correcting and certifying the foregoing record amount to $5.30, and that said amount has been paid me by the Appellant herein.

Witness my hand and the Seal of the District Court of the United States for the Southern District of California, this 5th day of July, A. D. 1940.

[Seal] R. S. ZIMMERMAN,
Clerk

By EDMUND L. SMITH
Deputy Clerk.

[Endorsed]: No. 9564. United States Circuit Court of Appeals for the Ninth Circuit. Tom Wing Art, alias Wing Fook Tom, alias Shorty Yuen, Appellant, vs. William A. Carmichael, District Director of U. S. Immigration and Naturalization Service, District No. 20, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Southern District of California, Central Division.

Filed July 6, 1940.

PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

In the United States Circuit Court of Appeals
for the Ninth Circuit

#9564
On Habeas Corpus

TOM WING ART, alias WING FOOK TOM, alias SHORTY YUEN,

Appellant,

vs.

WILLIAM A. CARMICHAEL, District Director of Immigration,

Appellee.

AFFIDAVIT OF SERVICE BY MAIL-1013a CCP

State of California
County of San Diego—ss.

Elizabeth S. Landweer, being sworn, says: That affiant is a citizen of the United States, over the age of eighteen, a resident of the County of San Diego, and is not a party to the above-entitled action; that affiant's business address is 920 Bank of America Building, San Diego, California; that on July 3, 1940, affiant served the within Statement of Points On Which Appellant Intends to Rely by placing a true copy thereof in an envelope addressed to Ben Harrison, U. S. Attorney, at his business address, "Federal Post Office Building, Los Angeles, California", and by then sealing and depositing said envelope, with postage thereon fully

prepaid, in the United States Mail at San Diego, California, where is located the office of the attorneys for the person by and for whom said service was made. That there is delivery service by United States mail at the place so addressed and there is a regular communication by mail between the place of mailing and the place so addressed.

ELIZABETH S. LANDWEER

Subscribed and sworn to before me this 3rd day of July, 1940.

[Seal] HUGH A. SANDERS
Notary Public in and for said County and State.

[Title of Circuit Court of Appeals and Cause.]

STATEMENT OF POINTS ON WHICH APPELLANT INTENDS TO RELY

Comes now the above-named appellant, Tom Wing Art, by his attorneys, Hugh Sanders, H. P. L. Beck and William H. Wylie, and states that the points upon which he, the appellant, intends to rely in this appeal are, as follows:

1. That the District Court erred in dismissing the Writ of Habeas Corpus and remanding appellant to the Immigration authorities;

2. That the District Court erred in sustaining the Secretary of Labor in directing the deportation of appellant from the United States;

3. That the record contains no evidence tending to establish that appellant "received, shared in or derived benefit from the earnings of a prostitute";

4. That the record contains no evidence tending to establish that appellant was "found connected with the management of a house of prostitution";

5. That the record contains no evidence tending to establish that applicant was "found managing a house of prostitution, or music or dance hall or other place of amusement, or resort, habitually frequented by prostitutes, or where prostitutes gather";

6. That the record contains no evidence tending to establish that appellant has committed any deportable offense;

7. That the record contains no evidence that appellant was "found connected with the management of a house of prostitution" or "found managing a house of prostitution, etc." at time the warrant of arrest was issued by Secretary of Labor or at time of his arrest;

8. That the record contains no evidence tending to establish that appellant has committed any of the deportable offenses set forth in the Warrant of arrest or contained in the Warrant of Deportation issued by Secretary of Labor under which the said Secretary of Labor seeks to deport appellant from the United States.

9. That the order of the United States District Court sustaining the warrant of deportation issued

by Secretary of Labor directing the deportation of appellant is against the law.

Respectfully submitted,

WILLIAM H. WYLIE
H. P. LARSON BECK
HUGH A. SANDERS
By WILLIAM H. WYLIE
Attorneys for Appellant,
Tom Wing Art

Received a copy of the within this.....day of July, 1940.

.....

Attorney for Appellee.

[Endorsed]: Filed July 6, 1940. Paul P. O'Brien, Clerk.

[Title of Circuit Court of Appeals and Cause.]

AFFIDAVIT OF SERVICE BY MAIL-1013a CCP

State of California
County of San Diego—ss.

Elizabeth S. Landweer, being sworn, says: That affiant is a citizen of the United States, over the age of eighteen, a resident of the County of San Diego, and is not a party to the above-entitled action; that affiant's business address is 920 Bank of America Building, San Diego, California; that on July 3, 1940, affiant served the within Designation of the Portions of the Record, Proceedings and

Evidence to Be Contained in the Record On Appeal by placing a true copy thereof in an envelope addressed to Ben Harrison, U. S. Attorney, at his business address, "Federal Post Office Building, Los Angeles, California", and by then sealing and depositing said envelope, with postage thereon fully prepaid, in the United States Mail at San Diego, California, where is located the office of the attorneys for the person by and for whom said service was made. That there is delivery service by United States mail at the place so addressed and there is a regular communication by mail between the place of mailing and the place so addressed.

ELIZABETH S. LANDWEER

Subscribed and sworn to before me this 3rd day of July, 1940.

[Seal] HUGH A. SANDERS
Notary Public in and for said County and State.

[Title of Circuit Court of Appeals and Cause.]

DESIGNATION OF THE PORTIONS OF THE RECORD, PROCEEDINGS AND EVIDENCE TO BE CONTAINED IN THE RECORD ON APPEAL.

To the Clerk of the above-entitled Court:

Please make copies of the following papers in the above entitled cause to be used in preparing Transcript or Record on Appeal:

1. Cost Bond on Appeal
2. Designation of Record on Appeal
3. Notice of Appeal
4. Order to Show Cause
5. Order Denying Writ and Remanding
6. Order Fixing Custody of Petitioner Pending Appeal
7. Petition for Writ of Habeas Corpus
8. Return to Writ of Habeas Corpus, Exhibit "A"—Warrant of Deportation of Alien
9. Statement of Points on Which Appellant Intends to Rely
10. Stipulation and Order Respecting Withdrawal of Immigration Record
11. Substitution of Party Respondent
12. Writ of Habeas Corpus.

Dated, San Diego, California, July 2, 1940.

WILLIAM H. WYLIE
H. P. LARSON BECK
HUGH A. SANDERS
By WILLIAM H. WYLIE
Attorneys for Appellant.

Received a copy of the within this.....day of July, 1940.

.....
Attorney for Appellee

[Endorsed]: Filed July 6, 1940. Paul P. O'Brien, Clerk.

No. 9564

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

TOM WING ART, alias WING FOOK TOM, alias SHORTY YUEN,

Appellant,

vs.

WILLIAM A. CARMICHAEL, District Director of U. S. Immigration and Naturalization Service, District No. 20,

Appellee.

Upon Appeal from the District Court of the United States for the Southern District of California, Central Division.

PROCEEDINGS HAD IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

PARKER PRINTING COMPANY, 545 SANSOME STREET, SAN FRANCISCO

United States Circuit Court of Appeals
for the Ninth Circuit

Excerpt from Proceedings of Wednesday, December 4, 1940.

Before: Denman, Mathews and Healy, Circuit Judges.

[Title of Cause.]

ORDER OF SUBMISSION

Ordered appeal in above cause argued by Mr. Wm. H. Wylie, counsel for appellant, and submitted on brief on file on behalf of appellee and submitted to the court for consideration and decision.

United States Circuit Court of Appeals
for the Ninth Circuit

Excerpt from Proceedings of Thursday, January 9, 1941.

Before: Denman, Mathews and Healy, Circuit Judges.

[Title of Cause.]

ORDER DIRECTING FILING OF OPINION AND FILING AND RECORDING OF DECREE

By direction of the Court, Ordered that the typewritten opinion this day rendered by this court in above cause be forthwith filed by the clerk, and

that a decree be filed and recorded in the minutes of this court in accordance with the opinion rendered.

[Title of Circuit Court of Appeals and Cause.]

Appeal from the District Court of the United States for the Southern District of California, Central Division.

OPINION

Before Denman, Mathews and Healy, Circuit Judges.

Mathews, Circuit Judge:

Pursuant to §19 of the Act of February 5, 1917, c. 29, 39 Stat. 889, 8 U.S.C.A. §155,[1] the Secretary of Labor issued a warrant for the arrest of appellant, a Chinese alien, and—after appellant had been arrested and given a hearing—a warrant for his

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[1] "* * * [Any] alien who shall be found an inmate of or connected with the management of a house of prostitution or practicing prostitution after such alien shall have entered the United States, or who shall receive, share in, or derive benefit from any part of the earnings of any prostitute; any alien who manages or is employed by, in, or in connection with any house of prostitution or music or dance hall or other place of amusement or resort habitually frequented by prostitutes, or where prostitutes gather * * * shall, upon the warrant of the Secretary of Labor, be taken into custody and deported * * *."

deportation to China, because of his having been (1) found connected with the management of a house of prostitution; (2) found receiving, sharing in or deriving benefit from the earnings of a prostitute; and (3) found managing a house of prostitution or music or dance hall or other place of amusement or resort habitually frequented by prostitutes, or where prostitutes gather. Appellant petitioned for and obtained a writ of habeas corpus, which, after a hearing, was discharged. From the order discharging the writ this appeal is prosecuted.

Appellant's immigration record—a record of the proceedings which culminated in the issuance of the warrant for appellant's deportation—was incorporated in and made part of his petition for habeas corpus, was received in evidence by the court below, and is the only evidence in the case. Therefrom it appears that the proceedings were in all respects lawful and regular, that the hearing which preceded the issuance of the warrant for appellant's deportation was a fair hearing, and that the Secretary's findings were amply supported by evidence.

The assertion, in appellant's brief, that the record contains no evidence that appellant managed or was connected with the management of a house of prostitution or received, shared in or derived benefit from the earnings of a prostitute, is unwarranted and false. The record reeks with such evidence. Appellant's petition should have been denied. The writ of habeas corpus should not have been

issued. Having been issued, it was properly discharged.

Order affrmed.

[Endorsed]: Opinion. Filed Jan. 9, 1941. Paul P. O'Brien, Clerk.

United States Circuit Court of Appeals
for the Ninth Circuit

No. 9564.

TOM WING ART, etc.,

Appellant,

vs.

WILLIAM A. CARMICHAEL, etc.,

Appellee.

DECREE

Appeal from the District Court of the United States for the Southern District of California, Central Division.

This Cause came on to be heard on the Transcript of the Record from the District Court of the United States for the Southern District of California, Central Division, and was duly submitted.

On Consideration Whereof, it is now here ordered, adjudged, and decreed by this Court, that the order of the said District Court in this cause be, and hereby is, affirmed.

[Endorsed]: Filed and entered January 9, 1941. Paul P. O'Brien, Clerk.

United States Circuit Court of Appeals
for the Ninth Circuit

Excerpt from Proceedings of Friday, February 7, 1941.

Before: Denman, Mathews and Healy, Circuit Judges.

[Title of Cause.]

ORDER DENYING PETITION FOR REHEARING

Upon consideration thereof, and by direction of the Court, It Is Ordered that the petition of appellant, filed February 6, 1941, and within time allowed therefor by rule of court, for a rehearing of the above cause be, and hereby is denied.

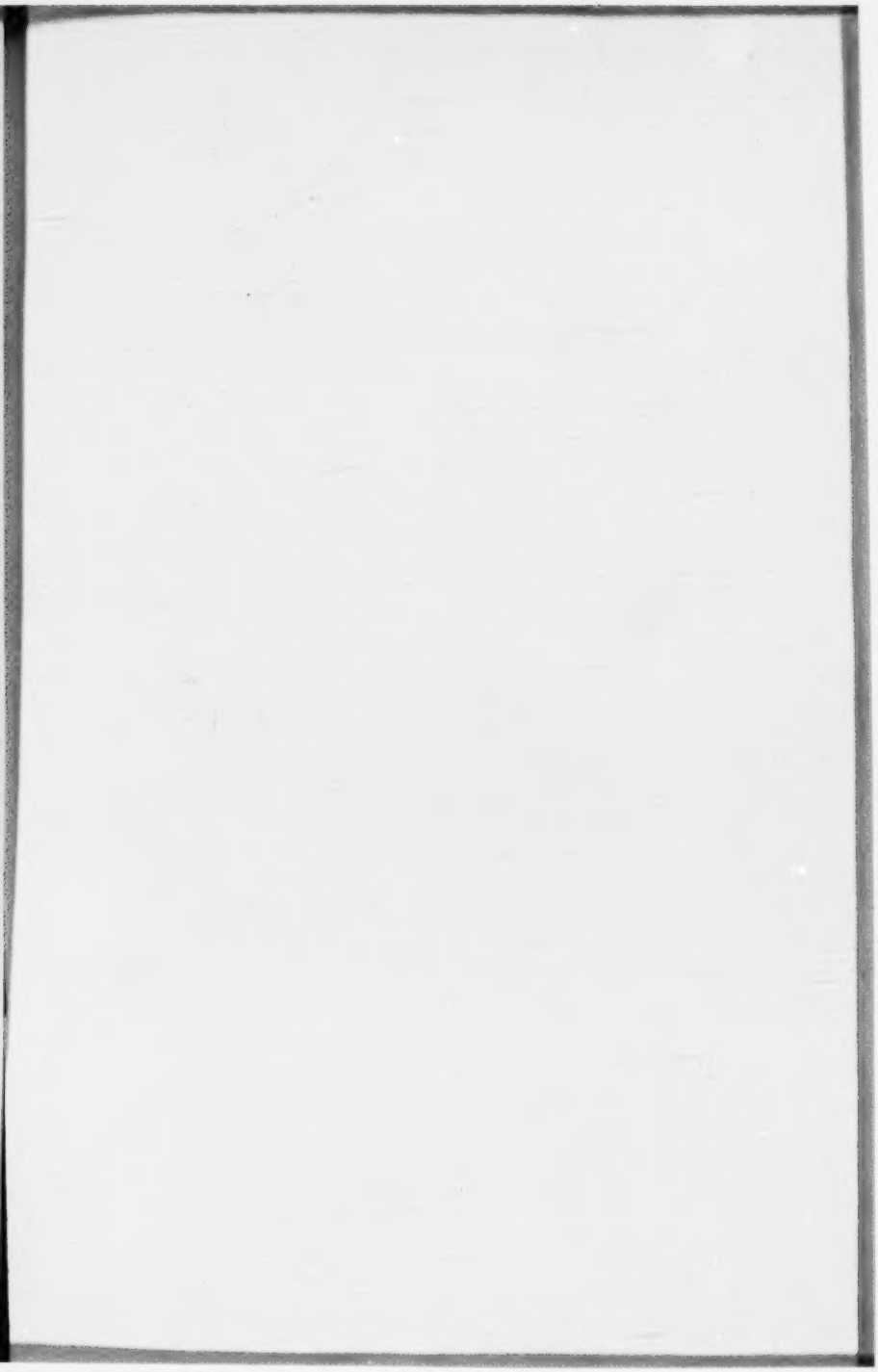
[Title of Circuit Court of Appeals and Cause.]

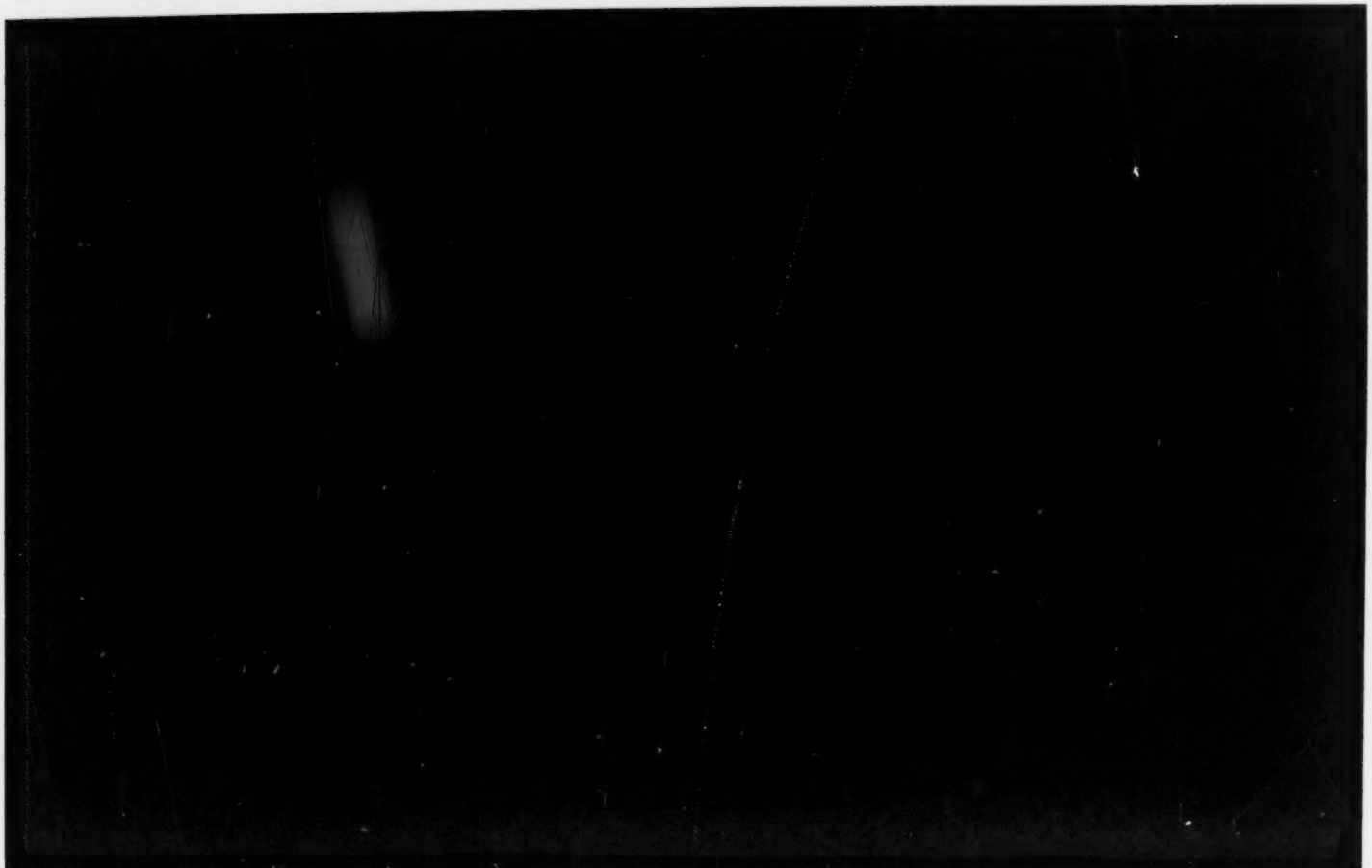
CERTIFICATE OF CLERK, U. S. CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT, TO RECORD CERTIFIED UNDER RULE 38 OF THE REVISED RULES OF THE SUPREME COURT OF THE UNITED STATES.

I, Paul P. O'Brien, as Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing forty-three (43) pages, numbered from and including 1 to and including 43, together with original Department of Labor files transmitted herewith, to be a full, true and correct copy of the entire record of the above-entitled case in the said Circuit Court of Appeals, made pursuant to request of counsel for the appellant, and certified under Rule 38 of the Revised Rules of the Supreme Court of the United States, as the originals thereof remain on file and appear of record in my office.

Attest my hand and the seal of the said United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this 14th day of March, 1941.

[Seal] PAUL P. O'BRIEN,
Clerk.





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315797—41——1

In the Supreme Court of the United States

OCTOBER TERM, 1940

No. 924

TOM WING ART, ALIAS WING FOOK TOM, ALIAS SHORTY YUEN, PETITIONER

v.

WILLIAM A. CARMICHAEL, DISTRICT DIRECTOR OF THE UNITED STATES IMMIGRATION AND NATURALIZATION SERVICE, DISTRICT NO. 20

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINION BELOW

No opinion was rendered by the District Court of the United States for the Southern District of California. The opinion of the Circuit Court of Appeals (R. 40–42) is reported in 117 F. (2d) 158.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered January 9, 1941 (R. 42). A peti-

tion for rehearing was denied February 7, 1941 (R. 43). The petition for writ of certiorari was filed April 5, 1941. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1935.

QUESTIONS PRESENTED

1. Whether the record before the immigration authorities in the deportation proceeding contains evidence to show that petitioner either (a) was connected with the management of a house of prostitution, (b) received, shared in, or derived benefit from the earnings of a prostitute, or (c) managed a house of prostitution.

2. Whether under Section 19 of the Immigration Act of 1917 it was necessary to establish that the petitioner's misconduct was occurring at the time the warrant of arrest was issued.

STATUTE INVOLVED

U. S. C., Title 8, Sec. 155 (Sec. 19 of the Immigration Act of February 5, 1917, c. 29, 39 Stat. 874, 889), provides in part as follows:

> * * * *any alien who shall be found* an inmate of or *connected with the management of a house of prostitution* or practicing prostitution after such alien shall have entered the United States, *or who shall receive, share in, or derive benefit from any part of the earnings of any prostitute; any alien who manages* or is employed by, in,

or in connection with *any house of prostitution or music or dance hall or other place of amusement or resort habitually frequented by prostitutes, or where prostitutes gather,* or who in any way assists any prostitute or protects or promises to protect from arrest any prostitute; any alien who shall import or attempt to import any person for the purpose of prostitution or for any other immoral purpose; any alien who, after being excluded and deported or arrested and deported as a prostitute, or as a procurer, or as having been connected with the business of prostitution or importation for prostitution or other immoral purposes in any of the ways hereinbefore specified, shall return to and enter the United States; any alien convicted and imprisoned for a violation of any of the provisions of section 138 of this title;[1] * * * shall, upon the warrant of the

[1] U. S. C., Title 8, Sec. 138 (Sec. 4 of the Immigration Act of February 5, 1917, 39 Stat. 878), provides:

"The importation into the United States of any alien for the purpose of prostitution, or for any other immoral purpose, is forbidden; and whoever shall, directly or indirectly, import, or attempt to import, into the United States any alien for the purpose of prostitution or for any other immoral purpose, or shall hold or attempt to hold any alien for any such purpose in pursuance of such illegal importation, shall in every such case be deemed guilty of a felony, and on conviction thereof shall be punished by imprisonment for a term of not more than ten years and by a fine of not more than $5,000. Jurisdiction for the trial and punishment of the felonies hereinbefore set forth shall be in any district to or into which said alien is brought in pursuance of said impor-

Secretary of Labor, be taken into custody and deported. * * * [Italics ours.][2]

STATEMENT

The petitioner, a citizen of China, entered the United States on June 12, 1921, as the son of a Chinese government official[2a] and has resided in San Diego, California, continuously since 1922 (Immigration Record, hereinafter called I. R., 30–31, 34–35).

On August 16, 1938, petitioner was arrested under a warrant issued by an Assistant Secretary of Labor charging, *inter alia,* connection with the management of a house of prostitution, the management of such a house, and the receiving, sharing in, or deriving benefit from the earnings of a prostitute (I. R. 296).

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tation by the person or persons accused, or in any district in which a violation of any of the foregoing provisions of this section occurs. Any alien who shall, after he has been excluded and deported in pursuance of the provisions of this subchapter which relate to prostitutes, procurers, or other like immoral persons, attempt thereafter to return to or to enter the United States shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by imprisonment for a term of not more than two years. In all prosecutions under this section the testimony of a husband or wife shall be admissible and competent evidence against each other." (Feb. 5, 1917, c. 29, Sec. 4, 39 Stat. 878.)

[2] The deportation order was based upon the italicized provisions of the statute.

[2a] Petitioner's father, at the time of petitioner's entry, was connected with one of the Six Chinese Companies, benevolent associations then considered semi-governmental. Section 3 of the Immigration Act of 1917, 39 Stat. 878

Various hearings were held by an immigrant inspector, petitioner being represented by counsel at those hearings at which evidence was introduced (I. R. 27–268). The Government introduced the testimony of two witnesses with reference to petitioner's participation in the business conducted at two houses of prostitution in San Diego, the De Luxe rooms, during the period from shortly prior to June 1932 to January 1934, and the Ardmore rooms, during the last few months of 1933 and from July through September 1936 (I. R. 38–97, 304–326). Both were cross-examined exhaustively by counsel for petitioner but did not modify their testimony in any significant detail (I. R. 38–97). To contradict the Government's witnesses, petitioner himself took the stand and called two witnesses, who testified in effect that they conducted the two rooming houses in question and that petitioner had nothing to do with them (I. R. 98–180, 197–210, 265–268). The Government called four witnesses in rebuttal (I. R. 211–265).

(U. S. C., Title 8, Sec. 136 (r)), provides: "That nothing in this Act shall be construed to apply to accredited officials of foreign Governments, nor to their suites, families, or guests." However, in an investigation conducted by the Immigration and Naturalization Service of this Department into the father's present status, the father admitted that his connection with the Six Companies terminated prior to February 5, 1924, and that he has had no official position since that time. The misconduct involved in the present case occurred after February 5, 1924. Neither here nor below has the petitioner claimed any immunity under Section 3.

The testimony of these various witnesses is summarized at length in the reports of the immigrant inspector and the Board of Review [3] (I. R. 269–278, 3–10).

These authorities found that three of the four charges made against the petitioner were supported by evidence and recommended petitioner's deportation (I. R. 278–279, 9–10).[4] After consideration of the proofs an Assistant to the Secretary of Labor, on August 14, 1939, issued a warrant of deportation (R. 13–14) reciting that petitioner "(1) has been found connected with the management of a house of prostitution; (2) has been found receiving, sharing in, or deriving benefit from the earnings of a prostitute; (3) has been found managing a house of prostitution, or music or dance hall, or other place of amusement or resort, habitually frequented by prostitutes or where prostitutes gather."

On October 2, 1939, the petitioner filed in the District Court for the Southern District of Cali-

[3] Before the Board of Review petitioner was represented by counsel, who appeared in person and presented a brief (I. R. 3, 12–25).

[4] In its report the Board of Review stated that (I. R. 3): "There is some indication that the connection of this alien with the business of prostitution in these two places [the De Luxe and the Ardmore rooms] may have been as the agent of one Tom Quin, who is alleged to have been the employer of this alien, and the Board of Review agrees with the stated opinion of the examining inspector that 'it is unnecessary to distinguish' whether the alien's connection with the business of prostitution in those places was that of a proprietor or that of an agent of a proprietor."

fornia a petition for a writ of habeas corpus (R. 1–8) which, so far as is presently pertinent, alleged that the Secretary of Labor had acted in excess of authority in that there was absolutely no evidence that the petitioner at the time of his arrest was engaged in the misconduct recited in the deportation warrant (R. 4–5), and that he had been denied a "fair hearing" because the Secretary had not been guided by the evidence and the provisions of the immigration laws (R. 5).[5] Petitioner requested that the immigration record be presented to the court at its hearing and when so presented it be regarded as incorporated in the petition as an exhibit (R. 7).

On the same day the District Court issued an order to show cause why the writ should not be granted (R. 9–10) and also the writ itself (R. 10–11). A return to the writ was filed on August 13, 1939, with a copy of the deportation warrant of August 14, 1939, annexed as an exhibit. The proceeding came on for hearing and was submitted on briefs, and the District Court, without opinion, denied the petition (R. 16).[6] The District Court's order was unanimously affirmed by the Circuit Court of Appeals (R. 40–42).

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[5] Possibly this was broad enough to support the point urged on appeal that the record contained no evidence tending to establish any of the grounds upon which deportation was predicated. See "Statement of points on which appellant intends to rely" (R. 25, 32).

[6] While no findings of fact were entered by the court (*White* v. *Johnston*, No. 697, present Term), this was not

ARGUMENT

1. Petitioner seeks to have this Court review the evidence *de novo* to determine whether he is deportable under Section 19 of the Immigration Act. This position clearly misconceives the scope of judicial review in deportation proceedings for it is axiomatic that the findings of the Secretary, if supported by evidence, are "conclusive upon the courts." *Kwock Jan Fat* v. *White,* 253 U. S. 454; *Kessler* v. *Strecker,* 307 U. S. 22, 34.

If, as we submit, the provisions of Section 19 upon which the warrant of deportation was predicated cover misconduct occurring prior to the commencement of the deportation proceeding as well as misconduct occurring at that time, there can be no doubt that, as the Circuit Court of Appeals said (R. 41): "The record reeks with * * * evidence" that petitioner managed or was connected with the management of a house of prostitution or received, shared in, or derived benefit from the earnings of a prostitute. Thus, it was shown that petitioner called at the De Luxe

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error in the instant case. The petitioner's contentions involve either the construction of the statute or the sufficiency of the evidence before the Secretary. They are determinable upon the immigration record which was made a part of the petition for writ of habeas corpus. Obviously, evidence was not required to resolve these contentions. Indeed, the court could not have attempted to supplement the evidence before the Secretary by a trial *de novo* (*Kessler* v. *Strecker,* 307 U. S. 22, 34). Issuance of the writ was consequently not required in the instant case.

rooms every night and at regular intervals "checked up" the receipts with the "landlady," a portion of which he retained (I. R. 309, 54), employed a prostitute to manage the place for him, dividing the net proceeds with her from time to time (I. R. 311–312), and stated to the police at one time that he was the owner (I. R. 213). Petitioner possessed a key to the Ardmore rooms (I. R. 321, 87), and on one occasion, at least, took his share of the money from a desk where the prostitutes deposited the fees (I. R. 322–323). On another occasion, he reprimanded a prostitute for sleeping while on call (I. R. 321), boasted that he was the "boss," and otherwise demeaned himself as one vested with authority superior to that of the landlady (I. R. 323–325). His collections from the Ardmore rooms were either on his own behalf or for one Quin, who operated several houses of prostitution (I. R. 322, 323).

Hence, petitioner's contention that this testimony fails to show his connection with the business of prostitution is wholly without merit. See *In re Psimoules,* 222 Fed. 118, 120–121 (S. D. Cal.), appeal dismissed, 224 Fed. 1022; *Costanzo* v. *Tillinghast,* 287 U. S. 341; *Chiuye Inouye* v. *Carr,* 98 F. (2d) 46 (C. C. A. 9th); *Yee Look* v. *Burnet,* 65 F. (2d) 594 (C. C. A. 9th); *Ex parte Loo Sheung,* 210 Fed. 990 (D. C. Cal.).

Petitioner testified on his own behalf and produced two witnesses connected with the two houses

of prostitution in question. Their testimony was to the effect that petitioner simply did errands for Quin, did not know of Quin's prostitution business, had no connection with that business, and derived no benefit from it (I. R. 98–180, 197–210, 265–268). This testimony produced at the most a conflict in the evidence which the immigration authorities were entitled to resolve. *Quon Quon Poy* v. *Johnson,* 273 U. S. 352, 358; *Tisi* v. *Tod,* 264 U. S. 131, 133; *Chin Yow* v. *United States,* 206 U. S. 8, 13; *Lee Lung* v. *Patterson,* 186 U. S. 165.

Petitioner also states (Pet. 28) that the findings "are supported by testimony of common rumors, general repute, and hearsay statements made by unidentified persons," but does not specify the evidence to which he refers. As we have shown, there was abundant evidence by witnesses personally acquainted with the facts.[7]

There is also no basis for petitioner's contention that the Circuit Court of Appeals held, contrary to *Werrman* v. *Perkins,* 79 F. (2d) 467 (C. C. A. 7th), that the burden was upon him to prove his right to remain in this country, even though he had lawfully entered the United States.[8]

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[7] If there is competent evidence to support a warrant of deportation, the presence of wholly insubstantial or incompetent evidence in the immigration record does not serve to make the decision arbitrary or capricious. *Chin Shee* v. *White,* 273 Fed. 801, 804 (C. C. A. 9th); *Guiney* v. *Bonham,* 261 Fed. 582, 585 (C. C. A. 9th).

[8] There is nothing in the opinion of the Circuit Court of Appeals which sanctions any such contention, nor is there

2. The petitioner, without analysis of the statute and in reliance solely upon the decision in *Kessler* v. *Strecker*, 307 U. S. 22, contends that the provisions of Section 19 of the Immigration Act of 1917 upon which the deportation order was based do not permit of his deportation because they relate only to misconduct occurring at the time the warrant of arrest is issued and not past misconduct. In this connection he points out that there was an interval of more than two years between the last misconduct upon which the Government relies and the issuance of the warrant of arrest.[9]

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anything in the immigration record which indicates that either the immigrant inspector or the Board of Review considered that the burden of proof was upon the petitioner. Indeed, it is apparent from the reports of the immigration authorities that their recommendations to deport were based on the ground that the Government had established all but one of its charges (I. R. 278–279, 9–10).

[9] It might well have been argued that in view of the fact that petitioner's misconduct had persisted for over four years the immigration authorities might reasonably have drawn the inference that this misconduct was being continued at the time the deportation proceeding commenced. However, there is nothing in the reports of the immigration authorities which expressly discloses that they drew this inference and there is some basis in the report of the Board of Review for the view that it may have been thought that past misconduct was sufficient (see paragraph dealing with the *Strecker* decision at I. R. 9). If the statutory provisions were limited in their application to misconduct occurring at the time the warrant of arrest is issued, the case should probably, under the circumstances, be remanded to the immigration authorities for further consideration. However, we think it is clear that those provisions are not so limited.

The *Strecker* decision is, we submit, not controlling. That case involved the construction of Section 2 of the Act of October 16, 1918,[10] not the provisions of Section 19 of the 1917 Act here involved (*supra,* pp. 2–3).

In holding that under Section 2 of the 1918 Act an alien who had become a member of a proscribed organization after entry could not be deported where he had ceased to be such at the time of his arrest, the Court placed considerable emphasis upon many factors which are absent here. These include: the fact that the section referred back for definition of the deportable classes to the provisions of Section 1, permitting exclusion only for present membership in a proscribed organization; the fact that the natural meaning of the deportation section indicated that the verb "found" properly qualified the phrase "at any time"; the fact that naturalization was denied only for existing membership in an interdicted organization; the support found in the legislative history; and the lack of a uniform administrative interpretation.

The so-called prostitution provisions of Section 19 of the 1917 Act are not comparable. While it is true that the exclusion provisions

[10] Section 2 of the 1918 Act (c. 186, 40 Stat. 1012) provided that "any alien who, at any time after entering the United States, is found to have been at the time of entry, or to have become thereafter, a member of any of the

dealing with prostitutes, procurers, and pimps relate only to a then existing rather than a past status or condition,[11] there is no reference back in the deportation provisions to the exclusion provisions in order to ascertain the deportable classes. They are enumerated and defined anew and with greater coverage. Moreover, those provisions, when read in their entirety (*supra,* pp. 2–3) make it abundantly clear that Congress meant that the country should be rid not only of those who were at the time of arrest engaged in the denounced practices but had manifested that they were members of a depraved and degraded class by their past misconduct, even if it consisted

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classes of aliens enumerated" in Section 1 shall, upon warrant of the Secretary of Labor, be taken into custody and deported. Section 1, as amended in 1920, provided for the exclusion of certain classes of alien immigrants, among which was "aliens who believe in, advise, advocate, or teach, or who are members of, or affiliated with any organization, association, society, or group that believes in, advises, advocates, or teaches * * * the overthrow by force or violence of the Government of the United States * * *."

[11] U. S. C., Title 8, Section 136 (Section 3 of the 1917 Act), provides that "the following classes of aliens shall be excluded from admission to the United States: * * * (g) * * * prostitutes, or persons coming into the United States for the purpose of prostitution or for any other immoral purpose; persons who directly or indirectly procure or attempt to procure or import prostitutes or persons for the purpose of prostitution, or for any other immoral purpose; persons who are supported by or receiving in whole or in part the proceeds of prostitution."

of a solitary act, such as, for example, the importing of a single prostitute or protecting her from arrest. Certainly as to such acts the statute would be well-nigh emasculated if it were required that the immigration authorities catch the alien red-handed and begin the proceeding while the act is being continued. The fact also that no time limitation is imposed upon deportation under the prostitution provisions of Section 19 (*Costanzo* v. *Tillinghast,* 287 U. S. 341) is strong evidence, when considered in connection with acts of the type mentioned, that Congress intended that the past as well as the present conduct of the alien should, so long as he remains an alien, be the subject of scrutiny.[12]

Furthermore, the verb "found" appears only in the clause of the prostitution provisions dealing with inmates of houses of prostitution, those practicing prostitution, and those connected with the management of a house of prostitution. It is not associated with any language, as in the

[12] The only exception is that of the prostitute, the procurer, or the pimp who was such at the time of entry but who was not discovered to be within that category within five years after entry. As to these a five-year limitation upon deportation is provided by the first clause of Section 19. However, it is unlikely that many of these are not taken into custody within the five-year period or that they do not commit similar acts after entry bringing them within the scope of the deportation provisions as to which no time limit applies.

Strecker case, which requires that it be confined to present activity. If it were given any such connotation, the unusual and apparently uncontemplated result would follow that an alien connected with the management of a house of prostitution or practicing prostitution would be deportable only if he or she was so engaged at the time the deportation proceeding began but that an alien who managed a house of prostitution or was employed by, in, or in connection with a house of prostitution, or received, shared in, or derived benefit from the earnings of a prostitute could be deported if this activity occurred in the past. The verb "found" is evidently used only in its ordinary meaning of "ascertained" (*In the Matter of Umeno,* 3 U. S. Dist. Ct. Haw. 481, 485), i. e., the Secretary must determine after an investigation that the facts are such as to bring the alien within the statutory prohibition.

We have been unable to find any legislative history or articulated administrative interpretation which would, as in the *Strecker* case, make against the Government's position.[13]

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[13] Petitioner also contends that the three-year statute of limitations applicable in criminal cases barred the deportation proceedings (Pet. 17, 20, 26–27). Deportation proceedings are, of course, civil and not criminal in nature (*Bilokumsky* v. *Tod*, 263 U. S. 149, 157; *Tisi* v. *Tod*, 264 U. S. 131, 133). And it is, moreover, well settled that no time limitation upon deportation exists as to the grounds upon which the deportation warrant in the present case is based. *Costanzo* v. *Tillinghast*, *supra*.

CONCLUSION

There exists no conflict of decisions, and the *Strecker* case is not controlling. The evidence abundantly sustained the deportation warrant under a correct construction of the statute. We therefore respectfully submit that the petition for writ of certiorari should be denied.

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